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89-523
NO.

Supreme Court, U.S.

FILED

SEP 28 1989

JOSEPH E. SPANIOLO, JR.
CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1989

BERMUDA STAR LINE, INC.,
Petitioner

VERSUS

JOHN SPYRIDON MARKOZANNES,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF LOUISIANA

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QUESTION PRESENTED

Whether state courts may apply state procedural law in place of the general maritime doctrine of *forum non conveniens* in a suit between foreign litigants on the grounds that the doctrine is unavailable under its procedural rules.

LIST OF PARTIES

The parties to the action are John S. Markozannes and Bermuda Star Line, Inc. The parent concern of Bermuda Star Line, Inc. is Norex, P.L.C, which owns a majority of Bermuda Star's stock. The Steamship Mutual Underwriting Association, Ltd. was originally named as a defendant but never served with process and, accordingly, is not a party to this Petition.

TABLE OF CONTENTS

| | PAGE |
|--|------|
| QUESTION PRESENTED | i |
| LIST OF PARTIES | i |
| TABLE OF CONTENTS | ii |
| TABLE OF AUTHORITIES | iii |
| OPINIONS BELOW | 2 |
| JURISDICTIONAL STATEMENT | 2 |
| CONSTITUTIONS, STATUTES, AND REGULATIONS INVOLVED IN THIS CASE | 3 |
| STATEMENT OF THE CASE | 5 |
| ARGUMENT | 9 |
| CONCLUSION | 18 |
| APPENDICES: | |
| A. TRANSCRIPT OF HEARING AND JUDG- MENT ON <i>FORUM NON CONVENIENS</i> EX- CEPTION IN DISTRICT COURT | A-1 |
| B. <i>IN GLOBO</i> : JUDGMENTS AND OPINIONS OF THE LOUISIANA FOURTH CIRCUIT COURT OF APPEAL | A-9 |
| C. JUDGMENT AND OPINION OF LOUISIANA SUPREME COURT | A-18 |
| AFFIDAVIT OF SERVICE | A-20 |

TABLE OF AUTHORITIES

| CASES: | PAGE |
|---|------------------|
| <i>The Belgenland</i> , 114 U.S. 355, 5 S. Ct. 860 (1964) | 9 |
| <i>Branch v. Schumann</i> , 445 F.2d 175 (5th Cir. 1971) | 12 |
| <i>Camejo v. Ocean Drilling & Exploration</i> , 838 F.2d 1374 (5th Cir. 1988) | 10,11,12,15,16 |
| <i>Canada Malting Co. v. Paterson Steamships</i> , 285 U.S. 418, 52 S. Ct. 413 (1932) | 9,10 |
| <i>Celeste v. Prudential-Grace Lines, Inc.</i> , 358 N.Y.S.2d 729 (N.Y. 1974) | 12,17 |
| <i>Charter Shipping Co., Ltd. v. Bowring, Jones & Tidy, Ltd.</i> , 281 U.S. 515, 50 S. Ct. 400 (1930) | 9 |
| <i>Couch v. Chevron Int'l Oil Co.</i> , 672 S.W.2d 16 (Tex. Ct. App. 1984) | 12 |
| <i>Daughtry v. Diamond M Co.</i> , 693 F. Supp. 856 (C.D. Cal. 1988) | 12,17 |
| <i>De Mateos v. Texaco, Inc.</i> , 562 F.2d 895 (3d Cir. 1977) | 10 |
| <i>Exxon v. Chick Kam Choo</i> , 817 F.2d 307 (5th Cir. 1987) | 7,10,11,12,15,16 |
| <i>Exxon v. Chick Kam Choo</i> , ____ U.S. ____, 108 S. Ct. 1684 (1988) | 7,10 |
| <i>Garrett v. Moore-McCormack Co.</i> , 317 U.S. 239, 63 S. Ct. 246 (1942) | 12,17 |
| <i>Gulf Oil Corp. v. Gilbert</i> , 330 U.S. 501, 67 S. Ct. 839 (1947) | 10,17 |
| <i>Hernandez v. Cali, Inc.</i> , 301 N.Y.S.2d 397 (N.Y. App. Div. 1969) | 11,17 |
| <i>Hilaire v. Henderson</i> , 496 F.2d 973 (8th Cir. 1974) | 12 |

TABLE OF AUTHORITIES (continued)

| CASES: | Page |
|---|---------|
| <i>Huff v. Compass Navigation</i> , 522 So. 2d 641 (La. App. 4th Cir. 1988) | 17 |
| <i>In re A/S J. Ludwig Mowinckels Rederi</i> , 307 N.Y.S.2d 660 (N.Y. 1970) | 14 |
| <i>Intagliata v. Merchants Towboat Co., Ltd.</i> , 159 P.2d 1 (Cal. 1945) | 12,16 |
| <i>Kassapas v. Arkon Shipping Agency, Inc.</i> , 485 So. 2d 565 (La. App. 5th Cir.), writ denied, 488 So. 2d 203 (La. 1986) | 14,16 |
| <i>Knickerbocker Ice Co. v. Stewart</i> , 253 U.S. 149, 40 S. Ct. 438 (1920) | 11,12 |
| <i>Lauritzen v. Larsen</i> , 345 U.S. 571, 73 S. Ct. 921 (1953) | 14,15 |
| <i>The Lottawanna</i> , 88 U.S. (21 Wall.) 558 (1875) | 11,13 |
| <i>Markozannes v. Bermuda Star Line, Inc.</i> , No. 88-2440 (La. App. 4th Cir. 1989) | 11,15 |
| <i>Markzannes [sic] v. Bermuda Star Line, Inc.</i> , 545 So. 2d 537 (La. 1989) | 11,13 |
| <i>Mason v. Ship Blaireau</i> , 6 U.S. (2 Cranch) 240, 2 L.Ed. 266 (1804) | 9 |
| <i>Missouri v. Mayfield</i> , 340 U.S. 1, 71 S. Ct. 1 (1950) | 8,13,17 |
| <i>Neely v. Hollywood, Inc.</i> , 530 So. 2d 1116 (La. 1988) | 17 |
| <i>Panama R. Co. v. Johnson</i> , 264 U.S. 375, 44 S. Ct. 391 (1924) | 11 |
| <i>Pastewka v. Texaco, Inc.</i> , 565 F.2d 851 (3d Cir. 1977) | 14 |

TABLE OF AUTHORITIES (continued)

| CASES: | Page |
|---|----------|
| <i>Piper Aircraft Co. v. Reyno</i> , 454 U.S. 235, 102 S. Ct. 652 (1981) | 10 |
| <i>Pratt v. United Arab Shipping Co.</i> , 585 F. Supp. 1573 (E.D. La. 1984) | 10 |
| <i>Sibaja v. Dow Chemical Co.</i> , 757 F.2d 1215 (11th Cir. 1985) | 10 |
| <i>Southern Pacific Co. v. Jensen</i> , 244 U.S. 205, 37 S. Ct. 524 (1917) | 11 |
| <i>Symeonides v. Cosmar Compania Naviera, S.A.</i> , 433 So. 2d 281 (La. App. 1st Cir. 1983) | 14 |
| <i>Wilburn Boat Co. v. Fireman's Fund Insurance Co.</i> , 348 U.S. 310, 75 S. Ct. 368 (1955) | 12 |
| <i>Zipfel v. Halliburton Co.</i> , 832 F.2d 1477 (9th Cir. 1987), <i>modified</i> , 861 F.2d 565 (9th Cir. 1988) | 14 |
| CONSTITUTIONS, STATUTES AND REGULATIONS: | |
| U.S. Const. art III, § 2, cl. 1 | 3,11 |
| 28 U.S.C. § 1257 (West Supp. 1989) | 2 |
| 28 U.S.C. § 1333 (1949) | 3 |
| 46 U.S.C. § 688 (1920 and West Supp. 1989) | 5,13 |
| La. Code Civ. Proc. Ann. art. 123 (West Supp. 1989) | 3-5,8,13 |
| LEGAL PERIODICALS: | |
| Bickel, <i>The Doctrine of Forum Non Conveniens as Applied in Federal Courts in Matters of Admiralty</i> , 35 Cornell L. Rev. 12 (1949) | 9,10,11 |
| Due', <i>The Rights of Foreign Seamen</i> , 7 The Maritime Lawyer 265 (1982) | 14 |

IN THE SUPREME COURT OF THE UNITED STATES
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BERMUDA STAR LINE, INC.,

Petitioner

VERSUS

JOHN SPYRIDON MARKOZANNES,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF LOUISIANA

Petitioner Bermuda Star Line, Inc. respectfully
prays that a Writ of Certiorari issue to review the Judgment and opinion of the Supreme Court of the State of Louisiana entered on June 30, 1989.

OPINIONS BELOW

All opinions below are contained in appendices to this Petition. The opinion of court of first instance, the Civil District Court for Orleans Parish in Louisiana, is contained in the transcript from that Court and is reproduced in Appendix A, *infra*, pp. A-1-A-6. Its judgment, dismissing petitioner's exception and maritime defense of *forum non conveniens*, also appears in Appendix A, *infra*, p. A-7. The two opinions of the Louisiana Fourth Circuit Court of Appeal, reversing the district court, are not reported. They are reproduced in Appendix B, *infra*, pp. A-9-A-17. The Louisiana Supreme Court's opinion, reversing the appellate court and reinstating the district court judgment, is reported at 545 So. 2d 537 (La. 1989). It is reproduced in Appendix C, *infra*, pp. A-18-A-19.

JURISDICTIONAL STATEMENT

The judgment of the Louisiana Supreme Court (Appendix C, *infra*, A-18-A-19) was entered on June 30, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONS, STATUTES AND REGULATIONS INVOLVED IN THE CASE

Article III, Section 2, Clause 1 of the United States Constitution provides:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all Cases affecting Ambassadors, other public Ministers and Consuls; - to all Cases of admiralty and maritime Jurisdiction; - to Controversies to which the United States shall be a Party; - to Controversies between two or more States; - between a State and Citizens of another State; - between Citizens of different States; - between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

28 U.S.C. § 1333, commonly known as the "Saving to Suitors" clause, provides in pertinent part as follows:

The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

(1) Any civil case of admiralty or maritime jurisdiction saving to suitors in all cases all other remedies to which they are otherwise entitled.

Louisiana Code of Civil Procedure Article 123 provides as follows:

A. For the convenience of the parties and witnesses, in the interest of justice, a district

court upon contradictory motion, or upon the court's own motion after contradictory hearing, may transfer a civil case to another district court where it might have been brought; however, no suit brought in the parish in which the plaintiff is domiciled, and in a court which is otherwise a court of competent jurisdiction and proper venue, shall be transferred to any other court pursuant to this Article.

- B. Except as provided in Paragraph C, upon the contradictory motion of any defendant in a civil case filed in a district court of this state in which a claim or cause of action is predicated solely upon a federal statute and is based upon acts or omissions originating outside of this state, when it is shown that there exists a more appropriate forum outside of this state, taking into account the location where the acts giving rise to the action occurred, the convenience of the parties and witnesses, and the interest of justice, the court may dismiss the suit without prejudice; however, no suit in which the plaintiff is domiciled in this state, and which is brought in a court which is otherwise a court of competent jurisdiction and proper venue, shall be dismissed pursuant to this Article. In the interest of justice, and before the rendition of the judgment of dismissal, the court shall require the defendant or defendants to file with the court a waiver of any defense based upon prescription, provided that a suit on the same cause of action is commenced in

a court of competent jurisdiction within sixty days from the rendition of the judgment of dismissal.

- C. The provisions of Paragraph B shall not apply to claims brought pursuant to 46 U.S.C. § 688 or federal maritime law.

STATEMENT OF THE CASE

FACTUAL BACKGROUND

This action was initiated by respondent John S. Markozannes, a citizen and resident of Greece, in the Civil District Court for Orleans Parish in Louisiana pursuant to the general maritime law and the Jones Act, 46 U.S.C. § 688, *et seq.*, ("Jones Act") against his employer Bermuda Star Line, Inc., the petitioner (hereinafter referred to as "Bermuda Star") (R. 1-5).¹ Respondent's suit alleges that he sustained an illness or injury while serving as a crewmember of the S/S BERMUDA STAR on or about October 27, 1987 (R. 1-5). The S/S BERMUDA STAR, an ocean-going passenger vessel registered under the law of Panama, was bareboat chartered to and operated by Bermuda Star (R. 1, 2, 263, 276, 280). At the time in question, the S/S BERMUDA STAR was on the high seas between Massachusetts and Bermuda (R. 276, 278-81).

Respondent was initially treated and hospitalized in New York before being repatriated to Greece (R. 264). Respondent alleges that some of the potential fact witnesses reside in Greece (R. 272-73, 457). All potential

¹ The Steamship Mutual Underwriting Association, Ltd., was also named in this suit, but is not a party to this petition as it was never served. The appearance of this concern is not necessary for this Court to render a decision on this Petition.

medical witnesses reside in Greece and New York (R. 272-73, 457). Certain "expert" consultants or witnesses chosen by respondent's counsel reside in Louisiana (R.272).

At all material times, Bermuda Star was a Cayman Islands corporation with its principal place of business in New Jersey (R. 276, 282). A British corporation, Norex P.L.C., owns approximately 59.9 percent of Bermuda Star's outstanding stock (R. 276). Bermuda Star does not have an office or agent for service of process in Louisiana (R. 7).²

PROCEDURAL HISTORY

Prior to filing suit, respondent's counsel threatened to attach the S/S BERMUDA STAR when the vessel docked in the Port of New Orleans (R.146-47). Following negotiations between counsel, the parties agreed that Bermuda Star would accept service through its counsel as its informally designated agent for service of process for purposes of this litigation only (R. 87-90). They also agreed that this appointment and acceptance of service was without prejudice to Bermuda Star's maritime defense of *forum non conveniens* (R. 87-90, 143-44, 151). Shortly thereafter respondent filed suit, and Bermuda Star timely asserted its maritime defense of *forum non conveniens*³ whereby it sought to have this action conditionally dismissed for refile in Greece or New York (R. 12).

The hearing on the *forum non conveniens* defense

² On May 12, 1989, it was announced that Bermuda Star would be renamed Norex U.S.A. This name change did not change the corporation's base of operations, ownership or status in Louisiana.

³ In Louisiana state courts, defenses are asserted by a pleading called "exception."

was held on October 21, 1988 before Civil District Court Judge Revius O. Ortique, Jr. (R. 474). Although he acknowledged the flood of maritime cases in Louisiana state courts, Judge Ortique concluded that he had no authority to dismiss the suit on *forum non conveniens* grounds (R. 477-84). Judge Ortique implicitly ruled that once a Louisiana state court obtains personal jurisdiction over a defendant in any foreign seaman's action, then a Louisiana state court was without authority to dismiss the action (R. 482-84). The district court did not clearly rely on any statutory or jurisprudential authority but felt bound to exercise jurisdiction since service was effected in Louisiana (R. 479-84).⁴ No written reasons were ever prepared by the district court (R. 307).

Bermuda Star timely applied for supervisory writs to the Louisiana Fourth Circuit Court of Appeal. The appellate court granted Bermuda Star's writ application and unanimously reversed the district court's judgment with the directive that the maritime doctrine of *forum non conveniens* is not waived once personal jurisdiction is established (R. 331). In reaching this holding, the court dismissed respondent's contentions that the maritime doctrine of *forum non conveniens* is merely a procedural device, relying on the Fifth Circuit analysis of the doctrine in *Exxon Corp. v. Chick Kam Choo*, 817 F.2d 305 (5th Cir. 1987), *rev'd on other grounds*, ___ U.S. ___, 108 S. Ct. 1684 (1988) (R. 329-31). The appellate court further rejected respondent's argument that Louisiana Code of Civil Procedure Article 123 prohibits the application of *forum non conveniens* in cases brought pursuant to the Jones Act and

⁴ Although the district judge referred generally to Louisiana decisions on appeals of a prior ruling in his court as controlling, a review of court records and legal research did not reveal any such precedent for the district court's ruling.

general maritime law in Louisiana state courts (R. 329-31).

Upon respondent's application for rehearing, the appellate court affirmed its original order and remanded the case for a decision on the merits of Bermuda Star's defense of *forum non conveniens* (R. 328). In its written reasons on rehearing, the panel unanimously followed the Fifth Circuit's ruling in *Choo* that state courts hearing cases brought pursuant to the Jones Act and the general maritime law must apply the federal doctrine of *forum non conveniens* where the state counterpart is inconsistent with the federal doctrine or, as in Louisiana, where there is no comparable rule (R. 327). The appellate court also held that Louisiana Code of Civil Procedure Article 123, by its terms, does not prohibit the application of the federal maritime doctrine of *forum non conveniens* (R. 328).

On remand, the district court stayed all proceedings pending a decision on respondent's writ application to the Louisiana Supreme Court (R. 448-49). In a *per curiam* opinion, five of the seven Louisiana Supreme Court justices granted respondent's writ application without oral argument, set aside the appellate court's decision and reinstated the judgment of the district court (R. 462-63). The Louisiana Supreme Court held that Louisiana procedural law governs all actions brought in Louisiana state courts, relying on *Missouri v. Mayfield*, 340 U.S. 1, 71 S. Ct. 1 (1950), and that Louisiana Code of Civil Procedure Article 123, which permits dismissal for *forum non conveniens*, is inapplicable to actions brought pursuant to the Jones Act or general maritime law (R. 463).

Bermuda Star seeks to have this Court grant a writ of certiorari to resolve this major conflict between maritime law and state procedure in maritime cases.

ARGUMENT

WHETHER STATE COURTS MAY APPLY STATE PROCEDURAL LAW IN PLACE OF THE GENERAL MARITIME DOCTRINE OF *FORUM NON CONVENIENS* IN A SUIT BETWEEN FOREIGN LITIGANTS ON THE GROUNDS THAT THE DOCTRINE IS UNAVAILABLE UNDER ITS PROCEDURAL RULES.

In broadly holding that state courts may apply local procedural rules to an admiralty dispute between foreign litigants without reference to the general maritime law, the decision of the Supreme Court of Louisiana substantially disrupts the uniformity of the general maritime law by interposing local procedure in place of the general maritime law. The issue presented by this Petition concerns the very heart and soul of the concurrent jurisdiction of state courts in the adjudication of maritime claims.

THE DOCTRINE OF *FORUM NON CONVENIENS* IS AN ESSENTIAL FEATURE OF THE MARITIME LAW THAT SHOULD BE UNIFORMLY APPLIED BY ALL COURTS IN ADMIRALTY CASES.

The doctrine of *forum non conveniens* is a deeply-rooted feature of the admiralty law. See generally *Bickel, The Doctrine of Forum Non Conveniens as Applied in Federal Courts in Matters of Admiralty*, 35 Cornell L. Rev. 12 (1949). For over a century, this Court has recognized that admiralty courts have discretion whether to exercise or decline jurisdiction in a maritime dispute between foreign litigants. *The Belgenland*, 114 U.S. 355, 365-66, 5 S. Ct. 860, 864-66 (1964); *Canada Malting Co. v. Paterson Steamships*, 285 U.S. 418, 420, 52 S. Ct. 413, 414 (1932); *Charter Shipping Co., Ltd. v. Bowring, Jones & Tidy, Ltd.*, 281 U.S. 515, 517-18, 50 S. Ct. 400, 401 (1930); *Mason v.*

Ship Blaireau, 6 U.S. (2 Cranch) 240, 2 L.Ed. 266 (1804). Pursuant to this doctrine, the trial court may entertain or decline its jurisdiction within its discretion, even concerning disputes arising in United States waters. *Canada Malting Co.*, 52 S. Ct. at 414; *see also Exxon v. Chick Kam Choo*, 817 F.2d 307, 321-22 (5th Cir. 1987), *rev'd.* on other grounds, ____ U.S. ____, 108 S. Ct. 1684 (1988)⁵. As applied by the federal courts, the doctrine of *forum non conveniens* affords a maritime defendant the right to adjudication in a forum which is convenient to the controversy in light of public and private factors affecting the matter in dispute. *Choo*, 817 F.2d at 322; *Camejo v. Ocean Drilling & Exploration*, 838 F.2d 1374, 1378-81 (5th Cir. 1988); *De Mateos v. Texaco, Inc.*, 562 F.2d 895 (3d Cir. 1977); *Pratt v. United Arab Shipping Co.*, 585 F. Supp. 1573 (E.D. La. 1984); *cf.* Bickel, 35 Cornell L. Rev. at 17.⁶ This maritime doctrine is an essential feature of admiralty jurisdiction. It embodies the discretionary restraint to the admiralty court to decline jurisdiction and the maritime defendant's right to a convenient forum considering all pertinent policy cir-

⁵ In *Choo*, this Court reversed the decision of the Fifth Circuit which upheld an injunction prohibiting a foreign litigant from proceeding in state court after an earlier determination had been made in a federal court, dismissing the action on grounds of *forum non conveniens*. 108 S. Ct. at 1691. This Court noted, but did not decide, the defendant's argument that federal maritime determinations of *forum non conveniens* were entitled to "pre-emptive force." The preemption issue was left to be presented to the Texas state courts. In the instant matter, the Louisiana Supreme Court held that the *forum non conveniens* motion could be decided solely by reference to state procedure.

⁶ *See also Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 102 S. Ct. 652 (1981); *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 67 S. Ct. 839 (1947); *Sibaja v. Dow Chemical Co.*, 757 F.2d 1215 (11th Cir. 1985), regarding application of the doctrine as incorporated into non-maritime cases. In his dissent to the majority opinion in *Gilbert*, Justice Black specifically noted that this doctrine is a peculiar aspect of admiralty jurisdiction "rooted in the kind of relief which these courts grant and the kinds of problems which they solve." 330 U.S. at 514, 67 S. Ct. at 845.

cumstances. See generally Bickel, 35 Cornell L. Rev. at 19-41.

Consistent with the constitutional grant of authority, this Court long ago held and consistently reaffirmed that the general maritime law is to be applied uniformly to cases arising in admiralty. U.S. Const. art. III, § 2, cl. 1; *Panama R. Co. v. Johnson*, 264 U.S. 375, 386-87, 44 S. Ct. 391, 393-94 (1924); *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149, 160, 40 S. Ct. 438, 440 (1920); *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 214-18, 37 S. Ct. 524, 528-30 (1917); *The Lottawanna*, 88 U.S. (21 Wall.) 558, 574-75 (1875). Recognizing the significant impediment to international commerce that would result from an inconsistent body of law, this Court clearly articulated the rule of uniformity in *The Lottawanna*:

One thing, however, is unquestionable: the Constitution must have referred to a system of law co-extensive with and operating uniformly in the whole country. It certainly could not have been the intention to place the Rules and limits of maritime law under the disposal and regulation of the several States, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign States.

88 U.S. (21 Wall.) at 575.

As an essential feature of the maritime law, the doctrine of *forum non conveniens* should be uniformly applied in all maritime cases in conformity with the decisions of the federal courts interpreting and applying that law. *Choo*, 817 F.2d at 324; *Camejo*, 838 F.2d at 1382; *Hernandez v. Cali. Inc.*, 301 N.Y.S.2d 397, 400-01 (N.Y. App. Div. 1969); see also *Markozannes v. Bermuda Star Line, Inc.*, No. 88-C-2440 (La. App. 4th Cir. 1989) (Appendix B. *infra*

pp. A-11, A-15-16); *Couch v. Chevron Int'l Oil Co.*, 672 S.W.2d 16, 18 (Tex. Ct. App. 1984). State laws or procedures may not be applied when such would work a material prejudice to the "characteristic features" of the general maritime law or would contravene uniformity of that law in some crucial respect.⁷ *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 242, 63 S. Ct. 246, 249 (1942); *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149, 160, 40 S. Ct. 438, 440 (1920); *Choo*, 817 F.2d at 317; *Camejo*, 838 F.2d at 1382; *Hilaire v. Henderson*, 496 F.2d 973, 980 (8th Cir. 1974); *Branch v. Schumann*, 445 F.2d 175, 178 (5th Cir. 1971).

THE OPINION OF THE LOUISIANA SUPREME COURT DECIDES AN IMPORTANT QUESTION OF FEDERAL LAW THAT SHOULD BE RESOLVED BY THIS COURT.

The decision of the Louisiana Supreme Court creates elemental conflict and disharmony between the general maritime law and local procedural rules in the adjudication of maritime matters. Under the auspices of state procedure, the Louisiana court refused to apply or even consider the maritime doctrine of *forum non conveniens*.

⁷ This is not to say that states courts and state law have no role in the adjudication of admiralty disputes. Under the Judiciary Act of 1789 and its amendments, jurisdiction over maritime matters was permitted in other courts, including the courts of the several states. *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 243, 63 S. Ct. 246, 249 (1942). Furthermore, in limited areas, particularly involving matters of local concern, state rules may supplement or even expand maritime concepts in absence of applicable maritime principles, *Wilburn Boat Co. v. Fireman's Fund Insurance Co.*, 348 U.S. 310, 75 S. Ct. 368 (1955), but no such supplementation is allowed in contravention of an established admiralty principle, *Garrett*, 317 U.S. at 243-44, 63 S. Ct. 249-50, "or where such would substantially . . . alter the rights of either litigant." *Id.*, at 245, 63 S. Ct. at 251. See also *Daughtry v. Diamond M Co.*, 693 F. Supp. 856, 862 (C.D. Cal. 1988); *Celeste v. Prudential-Grace Lines, Inc.*, 358 N.Y.S.2d 729, 731 (N.Y. 1974); *Intagliata v. Merchants Towboat Co., Ltd.*, 159 P.2d 1, 6 (Cal. 1945).

The factual setting here involves a suit by a Greek seaman for an illness board a Panamanian vessel operated by a Cayman Islands corporation and sailing between Massachusetts and Bermuda.⁸ In contrast to the uniformity called for by this Court in *The Lottawanna*, the perfunctory opinion of the Louisiana Supreme Court does not even acknowledge the possible application of maritime principles:

Granted. The judgment of the court of appeal is set aside, and the judgment of the district court is reinstated. Louisiana courts may apply Louisiana procedural law in causes of action brought in Louisiana courts, *Missouri v. Mayfield*, 340 U.S. 1 (1950). La.C.C.P. art. 123B, which authorizes dismissal on forum non conveniens grounds of a claim predicated solely on a federal statute based on acts or omissions originating outside the state, is not applicable to causes of action brought under 46 U.S.C. § 688 or the federal maritime law. La.C.C.P. art. 123C.

545 So. 2d 537 (Appendix C, *infra*, p. A-19).

This significant conflict between maritime law and local procedure directly impacts maritime commerce and affects the substantial rights of maritime litigants. Without resolution of this conflict by this Court, maritime

⁸ As reflected in the record, all of the known witnesses and sources of proof center in Greece or in New York (R. 272-73, 457). Respondent was initially treated in New York before being repatriated to Greece (R. 264). The fact witnesses identified by respondent's counsel are citizens and residents of Greece, near Athens, and the medical witnesses are located in either Greece or New York (R. 272-73, 457). The only contact with Louisiana is that the defendant informally appointed an agent to accept service of this particular suit and that plaintiff's counsel has contacted a local economic expert for consultation in connection with this litigation (R. 87-90, 272).

claimants dissatisfied with this maritime doctrine will increasingly "shop" for friendlier forums with procedural or other local laws which obviate the application of the maritime doctrine.⁹ Indeed, some claimants, after an adverse ruling by a federal court on a *forum non conveniens* motion, file subsequent actions or activate existing actions in state forums to obtain independent and conflicting resolutions of the same issue. See, e.g., *Zipfel v. Halliburton Co.*, 832 F.2d 1477 (9th Cir. 1987), *modified*, 861 F.2d 565 (9th Cir. 1988); *Kassapas v. Arkon Shipping Agency, Inc.*, 485 So. 2d 565 (La. App. 5th Cir.), *writ denied*, 488 So. 2d 203 (La. 1986); see also *Pastewka v. Texaco, Inc.*, 565 F.2d 851 (3d Cir. 1977); *Symeonides v. Cosmar Compania Naviera, S.A.*, 433 So. 2d 281 (La. App. 1st Cir. 1983). In absence of uniform application of this maritime doctrine, the current practice of multiple adjudication and forum shopping in search of favorable state procedural rules will continue — even in the face of an express contrary ruling by the original federal forum. *Id.*

It is difficult to conceive of a greater potential for disruption to international maritime commerce than that presented by multiple adjudications of the same issue without regard to uniform principles and subject to the inconsistent procedural rules of successive forums where a ship or an owner might have minimum contact sufficient for personal jurisdiction. In this setting, the comments of Justice Jackson in *Lauritzen v. Larsen*, 345 U.S. 571, 73 S. Ct. 921 (1953), regarding choice of law questions are particularly appropriate:

⁹ Due', *The Rights of Foreign Seamen*, 7 *The Maritime Lawyer*, 265, 279-80 (1982); cf. *In re A/S J. Ludwig Mowinckels Rederi*, 307 N.Y.S.2d 660 (N.Y. 1970).

[T]he virtue and utility of sea-borne commerce lies in its frequent and important contacts with more than one country. If, to serve some immediate interest, the courts of each were to exploit every such contact to the limit of its power, it is not difficult to see that a multiplicity of conflicting and overlapping burdens would blight international carriage at sea. Hence, courts of this and other commercial nations have generally deferred to a nonnational or international maritime law of impressive maturity and universality.

345 U.S. at 581, 73 S. Ct. at 928.

The decision of the Louisiana Supreme Court will have a grave and real impact upon international commerce if the conflict between maritime law and state procedure is left unresolved by this Court.

THE DECISION OF THE LOUISIANA SUPREME COURT DIRECTLY CONFLICTS WITH THE *CHOO* AND *CAMEJO* DECISIONS OF THE FIFTH CIRCUIT.

The Louisiana Supreme Court decision directly conflicts with the *Choo* and *Camejo* decisions of the United States Court of Appeals for the Fifth Circuit. *Camejo*, 838 F.2d at 1374; *Choo*, 817 F.2d at 307. In *Choo*, the Fifth Circuit comprehensively analyzed the policy considerations affecting the conflict between the state law of Texas and the maritime doctrine of *forum non conveniens* and held that state courts must apply the maritime doctrine in any case brought by a nonresident alien over which federal courts would have admiralty jurisdiction. 817 F.2d at 324. It adhered to this ruling in *Camejo*. 838 F.2d at 1382 (again holding that state courts must apply the maritime rule of *forum non conveniens* in actions by foreign litigants over

which the federal courts would have admiralty jurisdiction). *In dictum*, the *Choo* court severely criticized *Kassapas v. Arkon Shipping Agency, Inc.*, 485 So. 2d 565 (La. App. 5th Cir.), *writ denied*, 488 So. 2d 203 (La. 1986), which, at the time, was the only Louisiana appellate decision refusing to acknowledge the maritime *forum non conveniens* doctrine.¹⁰ 817 F.2d at 324. The Fifth Circuit expressed great concern that state courts would disregard the maritime *forum non conveniens* doctrine in maritime actions brought in their courts. *Id.*

Under the approach of the Louisiana Supreme Court, this issue is resolved solely by reference to state procedure, holding that the state procedure for *forum non conveniens* is not applicable to Jones Act or federal maritime claims. La. Code Civ. Proc. Ann. art. 123 (West Supp. 1989);¹¹ *see also Kassapas*, 485 So. 2d at 566. Without even considering this Court's rulings regarding uniformity or the analysis of

¹⁰ The Louisiana Court of Appeal for the Fifth Circuit in *Kassapas*, like the Louisiana Supreme Court in the case at bar, relied solely on this Court's decision in *Mayfield*, 340 U.S. 1, 71 S. Ct. 1 (1950), for the proposition that *forum non conveniens* is a "procedural" device. 485 So. 2d at 566. The *Kassapas* court held that because the doctrine was not at that time recognized in Louisiana procedural law, it could not be applied by the trial court. *Id.* at 566-67. This ruling was rendered prior to the Louisiana legislature's amendment to Article 123 providing for transfers and conditional dismissals pursuant to *forum non conveniens*.

¹¹ An interpretation of the Louisiana procedural rule is not material to a resolution of this dispute. Counsel for Markozannes has argued below that Article 123 constitutes an express prohibition against the application of *forum non conveniens* (R. 244). The Fourth Circuit Court of Appeal, however, held that the article does not attempt to address the applicability of *forum non conveniens* in cases involving maritime disputes. *See Appendix B, infra*, pp. A-11, A-16. Whether the Louisiana procedural rule prohibits application of the maritime doctrine or is simply silent on the issue, the maritime doctrine, as enunciated by this Court and applied uniformly throughout the federal system, should be applicable to maritime disputes heard by state courts in the exercise of concurrent jurisdiction. *See Choo*, 817 F.2d at 324.

the Fifth Circuit in *Choo*, the Louisiana Supreme Court relied on the inapposite opinion of *Missouri v. Mayfield*, 341 U.S. 1, 71 S. Ct. 1 (1950). This Court decided *Mayfield*, a FELA case, shortly after the *forum non conveniens* doctrine was applied by this Court in a non-maritime setting. See *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 67 S. Ct. 839 (1947). The *Mayfield* opinion did not involve maritime law or issues of uniformity and, thus, is not precedent for a state court to disregard the maritime doctrine in admiralty cases. *Choo*, 817 F.2d at 324 n. 18.

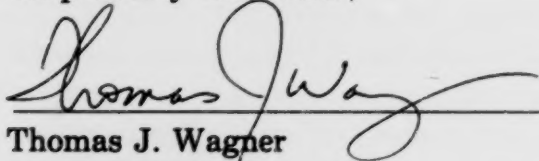
The Louisiana decision does not consider maritime law despite full briefing of the issue of uniformity by petitioner, respondent and *amicus curiae*. Despite this silence, the doctrine of *forum non conveniens* cannot be avoided as simply a procedural device inapplicable to admiralty claims filed in state court. The uniformity of the maritime law is not circumscribed by generic notions of substance and procedure. Uniformity applies to all areas affecting the substantial rights of the parties, even when such may conflict with the procedural rules usually applicable in state courts. *Garrett*, 63 S. Ct. 251; accord *Daughtry*, 693 F. Supp. 856; *Celeste*, 358 N.Y.S.2d 729; and *Hernandez*, 301 N.Y.S.2d 397.¹² The Louisiana decision stands in stark contrast to the express holding of the Fifth Circuit in *Choo* and *Camejo*, and petitioner respectfully prays for this Court to resolve this significant conflict.

¹² See also *Neely v. Hollywood, Inc.*, 530 So. 2d 1116, 1122 (La. 1988) (noting the controlling effect of maritime law on state courts to protect the "substantial rights of the parties" concerning a dispute of a seaman's release); *Huff v. Compass Navigation*, 522 So. 2d 641, 644 (La. App. 4th Cir. 1988) (applying the federal rule for review on appeal rather than the Louisiana procedure).

CONCLUSION

The conflict between the maritime doctrine of *forum non conveniens* and state law presents an important federal question that warrants resolution by the Supreme Court. Further, the decision below is in direct conflict with the Fifth Circuit decisions in *Choo* and *Camejo* concerning the uniform application of this doctrine to maritime cases. For these reasons, petitioner respectfully prays for a writ of certiorari to review the decision pursuant to Supreme Court Rules 17.1(a) and 17.1(b).

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Thomas J. Wagner", is written over a horizontal line.

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336 Camp Street
Suite 250, C & R Building
New Orleans, Louisiana 70130-2804
Telephone: (504) 525-2141
Counsel of Record for Petitioner
Bermuda Star Line, Inc.

OF COUNSEL:

Michael D. Martocci
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19 Fulton Street, Suite 405
New York, New York 10038
Telephone: (212) 233-4690

WAGNER & BAGOT

A-1

APPENDIX A

**CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA**

JOHN SPYRIDON MARKOZANNES

VERSUS

NO. 88-8624

**BERMUDA STAR LINE,
INC., ET AL**

CIVIL ACTION

DIVISION "H"

Testimony and Notes of Evidence held in the above-entitled cause, in Open Court before THE HONORABLE REVIUS O. ORTIQUE, JR., Judge presiding in Division "H" on FRIDAY, the 21st day of OCTOBER of 1988.

Reported By:

**SHANNON D. SMITH.
Official Court Reporter**

VERIFIED

A P P E A R A N C E S

**John Caskey
REPRESENTING PLAINTIFF**

**Thomas Wagner
REPRESENTING DEFENDANT**

PROCEEDINGS

THE COURT:

Alright, this is case number 88-08624 John S. Markozannes versus Bermuda Star Line, Inc.

Make your appearances for the record, please.

MR. WAGNER:

Your Honor, Thomas Wagner for the defendant and exceptor.

MR. CASKEY:

May it please the Court, John Caskey representing the plaintiff.

THE COURT:

And your exception, Sir?

MR. WAGNER:

Yes, Your Honor, on behalf of the defendant, Bermuda Star Line, we're asking the Court to engage a maritime doctrine, forum non conveniens that we have briefed in a couple of briefs before Your Honor. Our point is fairly simple but it does take some explaining. This is an action for personal injuries, action brought by the Greek seaman for a stroke or illness he sustained aboard a Romanian [*sic*, "Panamanian"] vessel on the highseas while traveling from Bermuda to Boston, Massachusetts. The vessel is owned by the Cayman Island Corporation which has operations in New Jersey. It is our position, we're asking the Court to conditionally dismiss this matter for it to

be brought in a more appropriate and more convenient forum. The doctrine of forum non conveniens is one that has been recognized for years and is an integral part of the maritime doctrine. This Court as a state court has full authority to consider and apply all maritime rights and remedies. The issue of whether or not the Court can grant what the defendant seeks here isn't resolved simply by demonstrating this request as a procedural request, substantive request, the issue is determined by Your Honor taking a look at the remedy and determining whether or not it involves any maritime rights or to be a part of the maritime rights. For example the state courts here constantly apply maritime rules for seaman and for maritime claimants and when they do so, maritime standards --

THE COURT:

Well, you admit that we have done it over and over again.

MR. WAGNER:

What do you mean by that?

THE COURT:

I mean that the Louisiana Courts have accepted jurisdiction and have gone ahead, prior to these maritime cases and as a matter of fact we now have a flood of maritime cases coming in here and we have got no way to keep them out.

Let me state to you, counselor, because I'm convinced that I've got to overrule your exception. In a situation where the accident occurred in the North Sea, the ship was registered in London and therefore was not a single individual aboard

the ship at the time of the accident where there would be any connection with Louisiana. The purser, however, lived and resided in Metairie, and unfortunately I can't put my hand on that case, but the Court in that case, I said, look, you've got to find some, and the ship was registered as a Norwegian ship, you've got to try some other places before you can come in here. The Court of Appeals, Supreme Court both said to me, do you have any connexity what so ever with Orleans Parish, Louisiana, let the matter come in.

MR. WAGNER:

I have two responses and two of them, the first I do not challenge this Court's authority or jurisdiction over the case. You have the authority to hear the case, but I submit that your Honor further has the authority and the right with that discretionary jurisdiction to indicate that this case should be tried somewhere else and to conditionally dismiss it for trial and the reason I do is--

THE COURT:

I don't even need to hear that. That is the same argument that they made before where they said, look, judge, force them to go try it in London or try it in Norway or try it in this place. It goes to the Court of Appeals and they definitely, positively said that you can't do that.

MR. WAGNER:

But since then we have the U. S. Supreme Court's decision in the Crew (SP. PHO.) case, Your Honor, where the Court reversed the Fifth Circuit granting of an injunction by a Federal Court against the State Court and it indicated that the issue of forum non conveniens was to

be decided. So, the U.S. Supreme Court says to the Fifth Circuit, the Court of Appeals, stay off of this issue. The State Court has the right and the authority to consider forum non conveniens and decide for itself whether or not to hear that and that is since Your Honor's decision within Louisiana, that you mentioned. So you do have the authority and I submit one other thing, there is no purser here in Louisiana--

THE COURT:

Hold your point. What is the connexity between Louisiana and your case?

MR. CASKEY:

Agent for service of process in Orleans Parish--

THE COURT:

How are you going to get away from this?

MR. WAGNER:

That allows personal injury [*sic*, "jurisdiction"]--that does now empower the Court, does not wipe out Your Honor's authority to weigh, they could be sued anywhere. It does not take away Your Honor's authority and power to weigh what is the venue, what is the appropriate forum for this matter to be litigated.

THE COURT:

I just waited [*sic*, "weighed"], your motion, your exception of forum non conveniens and improper venue are denied. Bring me a judgment to that effect--no point in us going back and forth, counselor, you made it clear. I refer you to, what is that man's name. . Mr. Dewey.

(OFF RECORD DISCUSSION)

* * * *

A-6

C E R T I F I C A T E

I, SHANNON D. SMITH, do hereby certify that the foregoing PROCEEDINGS to be a true and correct copy to the best of my knowledge and understanding.

/s/ Shannon D. Smith

SHANNON D. SMITH, CSR.

OFFICIAL COURT REPORTER

A-7

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 88-8624

DIVISION "H"

DOCKET NO. (4)

JOHN SPYRIDON MARKOZANNES
VERSUS
BERMUDA STAR-LINE, INC.

FILED: _____ DY. CLERK: _____

JUDGMENT ON EXCEPTION

Defendant's Exception of Venue and Motion to Dismiss Based on Forum Non Conveniens came on for hearing on the 21st day of October, 1988.

Present for mover: Mr. Thomas J. Wagner, Wagner & Bagot, Suite 250 - C&R Building, New Orleans, Louisiana, 70130;

Present for plaintiff: Mr. C. John Caskey, Attorney at Law, 628 North Boulevard, Suite 200, Baton Rouge, Louisiana, 70802.

Having weighed the evidence and considered the arguments of counsel, the law and evidence being in favor thereof:

The Exception of Venue and Motion to Dismiss on Forum Non Conveniens are DENIED.

A-8

New Orleans, Louisiana, this 24th day of Oct., 1988.

/s/ illegible

JUDGE, CIVIL DISTRICT COURT

PLEASE SERVE COUNSEL

APPENDIX B

| | | |
|--------------------------|---|-----------------|
| JOHN SPYRIDON MARKZANNES | ¶ | NO. 88-C-2440 |
| VERSUS | ¶ | COURT OF APPEAL |
| BERMUDA STAR LINE, INC. | ¶ | FOURTH CIRCUIT |
| ET AL | ¶ | STATE OF |
| | ¶ | LOUISIANA |

¶¶¶¶¶¶¶¶¶¶

| | |
|---------------|--|
| IN RE: | BERMUDA STAR LINE, INC. ET AL |
| APPLYING FOR: | SUPERVISORY WRITS |
| DIRECTED TO: | HONORABLE REVIUS O. ORTIQUE, JR., JUDGE, CIVIL DISTRICT COURT, PARISH OF ORLEANS, DIVISION "H", NO. 88-8624 |

WRIT GRANTED

Plaintiff, a citizen and resident of Greece, filed suit in Civil District Court against his employer, a Cayman Islands Corporation, with its base of operations in New Jersey and no office or agent for service of process in Louisiana, and its insurer. The plaintiff sought maintenance and cure and damages for an illness or injury he sustained aboard the S.S. Bermuda Star, a Panamanian vessel, bareboat chartered to and operated by the defendant. The injury occurred while the vessel was on the high seas between Boston and Bermuda. The plaintiff was hospitalized and treated in New York before being repatriated to Greece.

Before filing suit, the plaintiff's counsel announced he intended to have the Bermuda Star seized when it docked in New Orleans to secure jurisdiction here. In response, the defense agreed to accept service here and not to contest

personal jurisdiction. The defense then filed an exception of improper venue and a motion to dismiss based on forum non conveniens which were denied. The defendant filed this writ seeking this court's supervisory jurisdiction to review those rulings December 8, 1988. The relator announced at that time it wanted to supplement the record with the transcript of the hearing on the motions. That transcript has not yet been received by this court. However, it appears that the issues can be addressed without the transcript.

STATE LAW OR FEDERAL LAW?

In *Exxon Corp v. Chick Kam Choo*, 817 F.2d 305, 324 (5th Cir. 1987) the U.S. Fifth Circuit held:

Under the federal uniformity doctrine state courts must apply the *forum non conveniens* rule of the general maritime law in any case brought before them by citizens of foreign lands over which the federal courts would have admiralty jurisdiction [sic]. State law inconsistent with that doctrine cannot be applied in a maritime case. Accord *Couch v. Chevron International Oil Co.*, 672 S.W. 2d 16 (Tex.App.-Houston [14th Dist.] 1984 writ ref'd n.r.e); but cf. *Couch v. Chevron International Co.*, 682 S.W. 2d 534 (Tex.1984); contra *Kassapas*, 485 So.2d 567.

See also *In Re Air Crash Disaster Near New Orleans, La*, 821 F.2d 1145 (5th Cir. 1987). The respondent [sic] argues the applicability of C.C.P. art. 123, citing *Kassapas v. Arkon Shipping Agency, Inc.*, 485 So. 2d 656 (La. 5th Cir. 1986) writ. den., 488 So. 2d 203, U.S. cert. den., 107 S.Ct. 422 (1986), for the proposition that forum non conveniens is a procedural, rather than a substantive, law and that state court was declared unequivocally "wrong" in *Choo*.

Moreover, C.C.P. art. 123 by its own terms is inapplicable to claims brought pursuant to the Jones Act and federal maritime law. C.C.P. art. 123(c). Thus, since this is a case brought before state court by a foreign citizen over which federal courts have admiralty jurisdiction, the trial court must apply the *forum non conveniens* rule of general maritime law. *Choo*.

DOES WAIVER OF LACK OF PERSONAL JURISDICTION EXCEPTION RENDER INAPPLICABLE FORUM NON CONVENIENS DOCTRINE?

The relator states that the trial court found that the relator could not argue *forum non conveniens* after agreeing not to contest jurisdiction.

The doctrine of *forum non conveniens* presupposes that jurisdiction and venue are correct in the suit. Indeed, the doctrine can "never apply if there is absence of jurisdiction or mistake of venue". *Gulf Oil Corporation v. Gilbert*, 330 U.S. 501, 503, 67 S.Ct. 839, 841 (1947).

As such, consenting to jurisdiction does not prevent a litigant from arguing *forum non conveniens*. Indeed, the litigant could not argue the doctrine if jurisdiction did not exist.

Accordingly, the judgment of the trial court dated October 24, 1988 dismissing relator's exceptions is hereby reversed. This matter is remanded to the trial court with the directive that a *forum non conveniens* argument is not waived by waving jurisdictional arguments. Thus the trial court should bear [*sic*, "hear"] argument on this issue and rule on the merits of the *forum non conveniens* exception.

A-12

New Orleans, Louisiana, this 20th day of March,
1989.

/s/ RJK*
JUDGE ROBERT J. KLEES

/s/ JG
JUDGE JIM GARRISON

/s/ William H. Byrnes, III
JUDGE WILLIAM H. BYRNES, III

A TRUE COPY

New Orleans MAR 20 1989
/s/ Illegible Clerk
COURT OF APPEAL FOURTH
CIRCUIT

| | | |
|--------------------------|---|-----------------|
| JOHN SPYRIDON MARKZANNES | ¶ | NO. 88-C-2440 |
| VERSUS | ¶ | COURT OF APPEAL |
| BERMUDA STAR LINE, INC. | ¶ | FOURTH CIRCUIT |
| ET AL | ¶ | STATE OF |
| | ¶ | LOUISIANA |

¶¶¶¶¶¶¶¶¶¶

ON APPLICATION FOR REHEARING

The trial court ruled that since the defendant agreed to accept service of process in Orleans Parish, it was prevented from arguing forum non conveniens. This court reversed the trial court, and remanded the case with the instruction that a forum non conveniens agreement is not waived by waiving jurisdictional arguments. This court on March 20, 1989 ordered the trial court to rule on the merits of the forum non conveniens exception. The plaintiff now seeks a rehearing arguing: 1) This court's reliance on *Exxon Corporation v. Chick Kam Choo*, 817 F.2d 305 (Fifth Cir.1987) was incorrect because that case was overruled and 2) This court misinterpreted C.C.P. 123.

We consider rehearing on this Writ under Rule 2-18.7, Uniform rules, Courts of Appeal.

CHICK KAM CHOO

The applicant states *Chick Kam Choo*, supra, was overruled by the U.S. Supreme Court, ____ U.S. ____, 108 S.Ct.1684 (1988). In that opinion the Supreme Court interpreted the Anti-Injunction Act, 28 U.S.C.A. Sec. 2283 and its "relitigation" exception which permits a federal court to issue an injunction "to protect or effectuate its judgments." The U.S. Fifth Circuit in its opinion affirmed

a Federal District Court ruling which issued a broad injunction, prohibiting litigation in Texas state court. The plaintiff had originally filed suit in federal court asserting claims under the Jones Act, DOHSA, general maritime law and Texas Wrongful Death statutes. Federal district court dismissed the Jones [*sic*, "Jones Act"], DOHSA, and general maritime claims on summary judgment, and the rest of the case (Texas Wrongful Death Action) on forum non conveniens grounds. The Fifth Circuit affirmed. The plaintiff then filed this suit in Texas state court on all of the originally asserted grounds but later dismissed all claims except the Texas state law claim and a Singapore law claim. The defendants then filed in federal court for the broad injunction which was granted on the basis of prohibited relitigation. The U.S. Supreme Court reversed the granting of the injunction and remanded for entry of a more narrowly tailored order, stating "Of course, the fact that an injunction *may* issue under the Anti-Injunction Act does not mean that it *must* issue." The Court ordered the District Court to decide whether it was appropriate to enter an injunction. The Court found:

[6] The contention that an independent state forum non conveniens determination is pre-empted by federal maritime law, however, does little to help respondents unless that pre-emption question was itself actually litigated and decided by the District Court. Since respondents concede that it was not, Tr. of Oral Arg. 32, the relitigation exception cannot apply. As we have previously recognized, "a federal court does not have inherent power to ignore the limitations of 2283 and to enjoin state court proceedings merely because those proceedings interfere with a protected federal right or invade an area pre-empted by federal law, even when the interference is unmistakably clear." *Atlantic Coast Line*, 398 U.S.,

at 294, 90 S.Ct. at 1747. See also *Clothing Workers v. Richman Brothers Co.*, 348 U.S. 511, 75 S.Ct. 452, 99 L.Ed. 600 (1955). Rather, when a state proceeding presents a federal issue, even a pre-emption issue, the proper course is to seek resolution of that issue by the state court.

This is the course respondents must follow with respect to the Singapore law claim. It may be that respondents' reading of the pre-emptive force of federal maritime forum non conveniens determinations is correct. This is a question we need not reach and on which we express no opinion. We simply hold that respondents must present their pre-emption argument to the Texas state courts, which are presumed competent to resolve federal issues. *Cf. Pennzoil Co. v. Texaco, Inc.*, 481 U.S. at ____, *Clothing Workers*, *supra*, at 518, 75 S.Ct. at 456-57. Accordingly, insofar as the District Court enjoined the state courts from considering petitioner's Singapore law claim, the injunction exceeded the restrictions of the Anti-Injunction Act.

Id. at 1691.

By so ruling, it appears the the Supreme Court remanded the case to federal District Court for a determination of whether a more narrowly drafted injunction was proper, keeping in mind that the Texas state courts must rule on the forum non conveniens issue. The holding does not reverse the rule of law cited by the Fifth Circuit and relied on by this court, that is, the forum non conveniens rule of the general maritime law controls; inconsistent state law cannot be applied. (overruling *Kassapas* argued by the plaintiff but declared "wrong" by the Fifth Circuit, 817 F.2d at 324). On the contrary, the opinion supports this court's ruling: the Louisiana district court should make a

forum non forum non conveniens determination based on federal maritime law, which determination the state court is presumed competent to resolve.

INTERPRETATION OF C.C.P. ARTICLE 123

The applicant attacks this court's statement that: "[A]rt. 123 by its own terms is inapplicable to claims brought pursuant to the Jones Act and federal maritime law." C.C.P.art.123 (C). C.C.P.art.123 (C) provides: "The provisions of Paragraph (B) shall not apply to claims brought pursuant to 46 USC Sec. 688 or federal maritime law." Paragraph (B)₁ provides that a suit against a non-resident plaintiff based solely on a federal statute and based on acts or omission occurring outside of Louisiana may be dismissed without prejudice if the forum is shown to be inconvenient. Such a case brought by a resident plaintiff may not be dismissed. As such, paragraph (B) provides state substantive law to be applied in cases asserting federal causes of action. Paragraph (C) "by its own terms" renders that provision inapplicable to cases brought pursuant to the Jones Act and federal maritime law. The legislature has not "prohibited the application of forum non conveniens in state court" as argued by the defense. It has rendered *state* forum non conveniens doctrine inapplicable. Federal forum non conveniens doctrine, as noted by the U.S. Fifth Circuit in *Chick Kam Choo* and this court on the first hearing on this writ application, is applicable.

The plaintiff refers to a recommendation of the Louisiana Civil Law Committee to repeal section (C). Recommendations of that committee do not change articles promulgated by the legislature, which articles this court is bound to follow.

A-17

Accordingly our original order of March 20, 1989 remains unchanged.

New Orleans, Louisiana, this 19th day of April, 1989.

/s/ RJK

JUDGE ROBERT J. KLEES

/s/ JG

JUDGE JIM GARRISON

/s/ WHB

JUDGE WILLIAM H. BYRNES, III

A TRUE COPY

NEW ORLEANS APR 19 1989

/s/ Illegible Clerk

COURT OF APPEAL FOURTH
CIRCUIT

APPENDIX C

John Spyridon MARKZANNES [*sic*]

v.

BERMUDA STAR LINE, INC. et al.

No. 89-CC-1144.

Supreme Court of Louisiana.

June 30, 1989.

Writ of certiorari was sought to review unpublished decision of the Court of Appeal which disagreed with the Civil District Court, Parish of Orleans. The Supreme Court held that forum non conveniens statute, which authorizes dismissal of claim predicated solely on federal statute and based on act or omission originating outside state, is not applicable to causes of action under Jones Act or federal maritime law.

Writ granted.

Calogero and Dennis, JJ., would grant writ and docket case for argument.

1. Action 17

Louisiana court may apply Louisiana procedural law in causes of action brought in Louisiana courts.

2. Admiralty 5(2)

Courts 28

Forum non conveniens statute, which authorizes

dismissal of claim predicated solely on federal statute and based on act or omission originating outside state, is not applicable to causes of action under Jones Act or federal maritime law. Jones Act, 46 U.S.C.A.App. § 688; LSA-C.C.P. art. 123, subds. B. C.

PER CURIAM.

[1,2] Granted. The judgment of the court of appeal is set aside, and the judgment of the district court is reinstated. Louisiana courts may apply Louisiana procedural law in causes of action brought in Louisiana courts. *Missouri v. Mayfield*, 340 U.S. 1, 71 S.Ct. 1, 95 L.Ed. 3 (1950). La.C.C.P. art. 123 B, which authorizes dismissal on forum non conveniens grounds of a claim predicated solely on a federal statute based on acts or omissions originating outside the state, is not applicable to causes of action brought under 46 U.S.C. App. § 688 or the federal maritime law. La.C.C.P. art. 123 C.

CALOGERO and DENNIS, JJ., would grant the writ and docket for argument.

AFFIDAVIT OF SERVICE

STATE OF LOUISIANA

PARISH OF ORLEANS

BEFORE ME, the undersigned authority duly commissioned and qualified in the aforesaid state and parish, came and appeared:

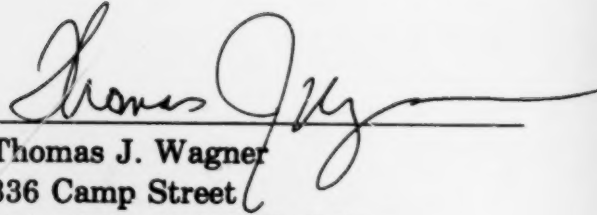
THOMAS J. WAGNER

who, after being sworn by me, did depose and say: that he is the counsel of record for petitioner Bermuda Star Line, Inc., and that three copies of this Petition were served on respondent John S. Markozannes through his attorneys of record delineated below by first-class mail, postage prepaid on this 27 day of September, 1989.

**C. John Caskey
628 North Boulevard, Suite 200
Baton Rouge, Louisiana 70802**

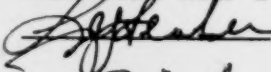
**Paul H. Due'
Due', Smith & Caballero
8201 Jefferson Highway
Baton Rouge, Louisiana 70809**

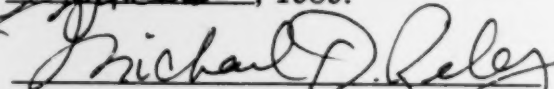
**Charles Wm. Roberts
1626 Applewood
Baton Rouge, Louisiana 70808**



Thomas J. Wagner
336 Camp Street
Suite 250 - C & R Building
New Orleans, Louisiana 70130
Telephone: (504) 525-2141
Counsel of Record for Petitioner

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 27 DAY OF

 September, 1989.



NOTARY PUBLIC

My commission expires: 